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Established 1887—34th Year—No 40

Mt. Vernon, Rockcastle County, Kentucky

Friday Afternoon, July 29, 1921

Price \$1.50 PER YEAR
IN ADVANCE

"Oppressive, and Consideration GROSSLY INADEQUATE"

Read the opinion of the Court of Appeals, and inform yourselves how Mr. H. C. Kennedy, candidate for Circuit Judge, undertook to get, for a consideration grossly inadequate, the farm of an old, ignorant negro.

The Wayne Circuit Court decided the case against Kennedy, and he carried it to the Court of Appeals, which court affirmed the judgment of the lower court in the following language:

"On February 22, 1911, Jordan McBeath, a colored man about seventy years of age, borrowed from the Monticello Banking Company the sum of \$39.46, and executed his note therefor with H. C. Kennedy as surety. In order to indemnify Kennedy, Jordan McBeath and wife executed to him a mortgage conveying a two-fifth interest in a tract of land containing about seventy acres. As Jordan McBeath owned only a two-ninths interest in the tract of land, it is claimed that his interest was described as two-fifths by mistake. When the note in question became due Kennedy executed his personal note to the bank and took up the old note, signed by himself and McBeath. When the new note matured Kennedy paid it. On June 26, 1912, Kennedy went to the home of Jordan McBeath and procured from him and his wife a deed conveying their two-ninths interest in the land to Kennedy and quit claiming any interest as to the remainder. At the same time Kennedy executed a collateral agreement by which he bound himself to convey to Jordan McBeath, or to any of his children, the tract of land, provided Jordan or any of his children repaid to him within six months from the date of the deed the sum of \$39.31 with six per cent. interest. The collateral agreement further provided that no difference who should redeem the tract of land, the wife of Jordan, should have the right to keep the same as a home during her natural life, unless she should abandon the place, and Kennedy bound himself in the event of the repayment to him of the sum above specified, to make a deed in accordance with that agreement. Shortly after the conveyance in question Jordan McBeath died, leaving a widow and five children. The land not being redeemed prior to the expiration of the six months provided in the collateral agreement, Kennedy conveyed the land to his father-in-law, Mike Castillo, who knew of the circumstances under which Kennedy acquired title.

"Castillo brought this action in ejectment against Henry McBeath, one of Jordan's children, to recover the land in question, and set out in his petition the above proceedings by which he obtained title. The defendant pleaded mental incapacity on the part of Jordan McBeath, inadequacy of consideration, and that the deed was intended only as a mortgage. He also pleaded a tender within six months of the consideration expressed in the deed. On final hearing, the chancellor adjudged the deed to be a mortgage, and denied plaintiff the relief prayed for. Plaintiff appeals.

"A great deal of evidence was heard on the question of tender, but, in view of the conclusions of the court, we deem it unnecessary to consider that question, or any question other than the effect of the conveyance. Jordan McBeath and his wife lived on the land in controversy, which is located about four miles from the town of Monticello. Jordan was not in good health, and Judge Kennedy, fearing that his interest in the land would not be sufficient to cover the debt on which he was surety, together with the costs of the action, rode out to Jordan's home for the purpose of getting him to execute the deed. The deed and collateral agreement had been prepared. Judge Kennedy says that Jordan's mind was in no way affected, and he was in full possession of his mental powers. The deed and collateral agreement were read to Jordan and his wife. Jordan suggested that another clause be added, providing that, no difference who redeemed the land, his wife, Kittie, should have the right to keep it during her lifetime. The closing line commencing with the word 'Witness my hand, etc.', was then erased and the clause in question added. During this time the defendant, Henry McBeath, was some distance away. At no time during the conversation did he say that the deed was a deed, and that they were explained to the parties that it was a deed, and that they were given six months more time within which to redeem the land. It was no inducement whatever for him to take another mortgage, as he already had one on the property. He never at any time said anything to the parties or led them to believe that the deed was a mortgage. He took the acknowledgment himself. This occurred on the 29th day of June. Two days later he took up the note at the bank and gave his note in lieu thereof, payable in six months. This note was subsequently paid. There is further evidence to the effect that Jordan McBeath's wife vacated the premises soon after she was notified that Castillo had purchased them. It is also shown that after the six months elapsed defendant, Henry McBeath, came to Castillo, and said that he had come to hear his doom.

"Kittie McBeath, Jordan's widow, said that when Judge Kennedy came he said the instrument was a mortgage. At that time Jordan was in bad health, and his mind was 'waivery.' Did not know whether he had a mind sufficient to realize and understand the nature and effect of the papers he was signing or not. Did not know that she had deeded the place away. Judge Kennedy said he did not want the place, and would give them a chance to pay for it. When Mr. Castillo bought the place she moved off. It was just a few days after the six months expired. She gave up the place because she thought it was his. The defendant, Henry McBeath, testified that at the time the deed was executed Jordan's condition was not good. Jordan could read print and write a little. Judge Kennedy said he would give them six months to pay in. He did not want the home; all he wanted was his money. It was the understanding of all present that the mortgage was to be prolonged for six months. Jay McBeath, another son of Jordan, testified that he was present when the deed was executed. Judge Kennedy said it was a mortgage. He further said it was in his power to set Jordan out of doors, but, as they had always been good friends, he was willing to fix it up so they would have six months more time. His father was very feeble at the time and died a few days later."

"The deed which Kennedy took not only conveys, with covenant of general warranty, the two-ninths interest covered by the mortgage, but in addition thereto grants, quit claims and turns over the possession of the remaining seven-ninths interest in said tract of land, and, as to this part, the grantors warrant the title against themselves, their heirs and assigns only. It is true Jordan McBeath had deeded to only two-ninths of the tract. There is evidence, however, tending to show that the remaining interests had been given to him, or he had title bonds therefor. Certain it is that he had been living on the land for about 35 years. The whole land is worth at least \$200, and probably as much as \$400. At the time the deed was executed Kennedy had not paid the note at the bank. He executed the new note on December 28th. The old note on which he was surety was never surrendered to Jordan McBeath. Even if we accept Judge Kennedy's statements as true, that he never mentioned the word 'mortgage,' he practically admits that he told the grantors that he wanted to give them six months more in which to redeem the land. His only motive for taking the deed could not have been merely to secure a deed for that to which he already had a mortgage, if, as a matter of fact, he acquired all the title that the grantors had to the land in controversy. The consideration expressed in the deed was the exact amount of indebtedness. Compared with the value

of the entire tract, the consideration is grossly inadequate. The collateral agreement provides for a redemption within six months upon the payment of the debt and interest. These old negroes evidently believed that Kennedy, by virtue of the mortgage, could take their land, and were induced to execute the deed because they believed it gave them six months longer time within which to redeem the land. Thus there is present in this case every element which would ordinarily induce the court to adjudge a deed to be a mortgage. The deed was made to secure a debt. The grantors were left in possession. There is a collateral agreement permitting the redemption of the land on payment of the consideration with interest. The consideration is grossly inadequate, and the transaction therefore oppressive if the instrument is held to be a deed."

Opinion of the Court by William Rogers Clay, Commissioner—Affirming. Decided January 27, 1915. 162 Kentucky Reports, page 382.—"Somerset Commonwealth."

Who Got the Indictment Out Against Judge Jasper

AND THE MAGISTRATES?

Note What Jasper's Own Statement Says
About This

Recently there appeared in "The Commonwealth" an affidavit sworn to by Mr. Simpson Phelps, an attorney at the local bar, in which was set forth in graphic manner all that was done, and by whom, in the investigation made by the grand jury at the May term, 1917, Pulaski Circuit Court, at which time the said grand jury found a number of indictments against Judge Jasper and others. Mr. Phelps explained that he and Judge Tartar alone procured and furnished the record proof, and other evidence, to the grand jury, and that it was upon this that the indictments were based. This affidavit is corroborated by the statement of Judge Jasper himself, made June the 12th, 1917, and which was published by said Jasper, and scattered throughout Pulaski County at that time. Note what Jasper said in that statement. We copy it in part as follows:

"R. C. Tartar made a statement in the 'Semi-Weekly News' of February 9th, that if things went on as they had been going the Circuit Court would have to intervene, and protect the taxpayers of Pulaski County, and before the beginning of last term of the Circuit Court, I saw one Simpson Phelps and R. C. Tartar in the Clerk's office and Tartar was giving Phelps figures which he was taking down. I also saw Phelps in Tartar's office, and then it was announced that Phelps would expose graft on the part of myself and the Fiscal Court on the first day of Circuit Court, and then after the grand jury had been empaneled, Phelps began his tirade of abuse on me, and charged that violations of the law have been committed by myself and the Fiscal Court, which was the echo of Tartar's heart, and the delivery of what he had drilled into Phelps. Tartar hiding behind Phelps, and that for the purpose of injuring me and benefiting himself. The grand jury returned several indictments against me and the Road Engineers and the Magistrates. I charge that politics was at the bottom of it all and my opponent, R. C. Tartar, responsible for it, and that for the purpose of injuring me and benefiting himself."

The complete statement issued by Judge Jasper at that time and from which the above is taken, is in "The Commonwealth" office, and anyone desiring to examine it may do so.—"Somerset Commonwealth."

The Betrayal AND THE Clothes

State of Kentucky }
Pulaski County. } Sec.

The affiants, Chas. L. Gragg, J. S. Cooper, J. M. Weddle, Wm. M. Catron and J. R. Cook, come and state that they are each resident citizens of Somerset, Pulaski County, Kentucky and that they are republicans.

They state that they are acquainted with H. C. Kennedy, a candidate for circuit judge in the coming August primary election; that the said Kennedy openly fought the Republican ticket in Pulaski County during the campaign of 1917, and made speeches for the democratic ticket throughout this county during the entire fall campaign of that year.

They further state that they are acquainted with Hon. T. V. Ferrell, Chairman of the Democratic County Committee of Pulaski County, and they heard him state that he, within two or three days after the general election of 1917, made the said H. C. Kennedy a present of a complete outfit of wearing apparel, including suit, shoes, underwear, shirt, collar, tie and socks, and when questioned as to why he was so generous to Kennedy, said that he felt grateful to him for what he had done for the democratic party, and wanted to reward him therefor.

Chas. L. Gragg,
J. S. Cooper,
J. M. Weddle,
Wm. M. Catron,
J. R. Cook,

Subscribed and sworn to before me by Chas. L. Gragg, J. S. Cooper, J. M. Weddle, Wm. M. Catron, J. R. Cook, this 23rd day of July 1921.

Woodson May,
Notary Public.

State of Kentucky }
Pulaski County. } Sec.

The affiant, Charles L. Gragg, comes and states that he is a citizen and resident of Pulaski County, Ky. and for many years taught school in said county. He states that he supported H. C. Kennedy for circuit judge six years ago, and that after Kennedy's defeat in the primary he, the said Gragg, called a conference and advised

An Untruth

TO THE REPUBLICANS:

I have just had my attention called to a circular letter which is being mailed out to the voters by one J. W. Rider, a notorious character of Mt. Vernon, in which he states that the same jurors are used two or three times a year, and further that one man served as a Grand juror and indicted a man on a murder charge, and then sat on the petit jury and tried and acquitted the man indicted by him. This whole statement is false and untrue, and is known to be false by the man who wrote it. The law would not permit a thing of this sort, and nothing of the kind was ever done, and this man Rider is putting this out for the purpose of deceiving the people and no other purpose. The records of the Clerks office disprove the whole miserable fixup.

This is the same Rider who has taken the benefit of the bankrupt law time and again, not because of an honest failure in business, but because this was an easy way to beat his honest debts. Who will credit anything that a man of this character will say? Surely the manly worth of the republican party of Rockcastle will not be misled by this democrat who is pretending to be a republican.

Faithfully yours,

B. J. BETHURUM

all his friends that attended said conference to support Judge Cress the democratic nominee for circuit judge. He continued to advise his said friends to give Cress their support throughout the fall campaign of 1915.

He further states that the said Kennedy openly supported and made speeches for the democratic ticket in this county four years ago, and did this for about six weeks, or throughout the fall campaign.

He further states that he was present and heard Hon. T. V. Ferrell, the democratic county chairman of Pulaski Co., a day or two after the general election, 1917, propose to make the said Kennedy a present of a suit of clothes, &c., and that Kennedy at that time went into the back part of the store room of Ferrell to make his selection of said clothing, and the following few days afterward, the said Kennedy met affiant on the streets of Somerset and showed him the suit, told him that it was the one that Ferrell had given him. He was wearing the suit on this occasion, and seemed well pleased with it.

Chas. L. Gragg.

Subscribed and sworn to before me by Chas. L. Gragg, this July 25th, 1921.

[SEAL] J. R. Cook, N. P.
My commission expires Jan. 27, 1924.

LEGAL VOTERS IN THE
PRIMARY

Only known republicans will be permitted to vote in the Primary, August 6th. Republicans only are holding a primary this year; no democrat ticket will appear on the ballot. The democrats will not be permitted to vote in this primary and none need apply for a ballot. In other words, it is useless for the democrats to attend the election, and it is to be hoped they will not do so, and thus avoid confusion.

L. W. BETHURUM
ATTORNEY AT LAW
MT. VERNON, KY.
Will practice in all the courts
Office on Church Street

To the Republicans of Rockcastle County:

It has been circulated by some designing parties that I have destroyed a number of indictments since I have been Circuit Court Clerk. They claim most of them were destroyed at the February and May Terms, 1921.

These charges are absolutely false: there has never been an indictment misplaced, much less destroyed, since I have been Clerk. There was 81 indictments returned at the February Term and 90 at the May Term. Each of these indictments was filed and docketed as the law directs. Read what the Commonwealth Attorney and County Attorney say about it. They themselves draw every indictment returned by the Grand Juries, and personally know if the Clerk is doing his duty.

T. J. NICELEY

Mt. Vernon Ky.,
July 15, 1921.

To the People of Rockcastle County,

We, the undersigned, Commonwealth's Attorney and County Attorney take pleasure in making the following statements to you, relative to the way and manner that Mr. T. J. Niceley, Circuit Court Clerk, has handled and conducted the business of his office relating to filing and recording indictments returned by the grand juries. We personally know he has filed and recorded each indictment that has been returned by the grand jury, which were drawn by us and reported by it; that we know that no indictment reported and returned was ever lost, stolen or failed to be properly recorded by him as Clerk, as the law directs; that he has been painstaking, strictly honest with the people; that the report that Mr. Niceley has destroyed or misplaced any indictment is false, without foundation and untrue.

Very Respectfully,

W. N. Flippin.

S. D. Lewis.